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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2007 MAY 30 PM 2:34

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

*Protecting Texas by Reducing and Preventing Pollution*

May 30, 2007

Mr. Derek Seal  
General Counsel  
Texas Commission on Environmental Quality  
P. O. Box 13087, MC 101  
Austin, Texas 78711-3087

**Re: Application Oak Grove Management Company, L.L.C., for a New Air  
Quality Permit No. 76474; SOAH Docket No. 582-06-1502; TCEQ  
Docket No. 2006-0195-AIR.**

Dear Derek,

On August 23, 2006, the Administrative Law Judges in the above-captioned case issued their Proposal for Decision (PFD) for the commission's consideration pursuant to 1 TEX. ADMIN. CODE § 155.59 and 30 TEX. ADMIN. CODE §§ 80.252 and 80.261. Your office has set this matter for deliberation on the commission's June 13, 2007 agenda meeting. Part of the deliberation by the commission may include evaluation of evidence submitted during the contested case hearing held June 13 through June 20, 2006 at the State Office of Administrative Hearings.

Both the Administrative Procedure Act (APA) and the TCEQ rules provide for the commission to avail itself of the special skills and knowledge of agency staff in evaluating the evidence in a contested case hearing. TEX. GOV'T CODE § 2001.090(d). *See also*, 30 TEX. ADMIN. CODE § 80.15(b). This specific type of communication is not considered improper *ex parte* consultation with the commission. TEX. GOV'T CODE § 2001.061(c). While the APA does not provide any specific guidance regarding consultation between the commission and designated staff, similar language in TCEQ rules providing for an ALJ to consult with agency staff provides some guidance on the issue. Specifically, the rule states: "(d)uring the pendency of the case either before the judge or at the commission, no party, person, or their representatives shall communicate directly or indirectly with the designated staff expert assigned..., except on notice and opportunity for all parties to participate." 30 TEX. ADMIN. CODE § 80.15(b)(3).

In response to your request for a staff expert for consultation regarding the Oak Grove matter, specifically with regard to issues relating to Best Available Control Technology, the Executive Director designates Mr. Stephen Hagle, Special Assistant to the Director, Air Permits Division to assist in this capacity. From this point forward, Mr. Hagle has been advised by the Office of Legal Services to refrain from having any contact with staff

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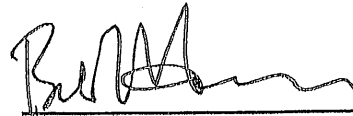
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